

SPRINGFIELD ENGINEERING  
COMPANY,

Plaintiff,

VS.

BIG-D CONSTRUCTION MIDWEST, LLC,  
et al.,

Defendants.

Case No. 18-cv-03123

## NOTICE OF REMOVAL

COMES NOW Defendant Big-D Construction Midwest, LLC (“Big-D Construction”), by and through undersigned counsel, and by consent of Defendant Dairy Farmers of America, Inc. (“DFA”), hereby removes the above-styled case from the Circuit Court of Texas County, Missouri, Case No. 18TE-CC00076, to the United States District Court for the Western District of Missouri, pursuant to 28 U.S.C. §§ 1332(a), 1441(a), and 1446. Based on the allegations asserted by Plaintiff Springfield Engineering Company (“SECO” or “Plaintiff”), removal is appropriate as complete diversity exists between the parties and more than \$75,000 is in controversy. As grounds for removal, Big-D Construction states as follows:

## INTRODUCTION

1. On March 7, 2018, Plaintiff filed a five-count Verified Petition (“Petition”) alleging breach of contract, unjust enrichment, violations of the Missouri Prompt Payment Act, and breach of the implied covenant of good faith and fair dealing. The crux of Plaintiff’s Petition is the allegation that Big-D Construction failed to pay Plaintiff \$722,839.52 alleged to be due under a subcontract that required Plaintiff to perform certain work on an expansion project for DFA, which

involved the construction of a glass bottling line at DFA's facility in Cabool, Missouri. (*See* Petition, at ¶¶ 6, 17-19, 26). Specifically, Plaintiff alleges that Big-D Construction substantially increased the work Plaintiff was to perform under the subcontract, resulting in a number of change orders, but failed to remit payment for the change orders and increased scope of work. (*Id.* at ¶¶ 16-19). In addition, Plaintiff seeks to foreclose on mechanic's liens it purports to have filed on DFA's property.

2. On March 9, 2018, the State Circuit Court issued the Summons in this action.

3. On March 13, 2018, Plaintiff served Big-D Construction with the Summons and a copy of its Petition.

4. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Petition, Summons and Return of Service are attached hereto as Exhibit 1 and comprise the complete State Court file.

5. As set forth more fully below, this action is one that Big-D Construction may remove to this Court under 28 U.S.C. § 1441 because Big-D Construction has satisfied the procedural requirements, and this Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a). The face of the Petition shows that there is complete diversity between the parties and more than \$75,000 in controversy.

#### **BASIS FOR REMOVAL**

6. 28 U.S.C. § 1441(a) controls the circumstances in which a party may remove a state civil action to a United States District Court, and provides that:

any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

7. Pursuant to 28 U.S.C. § 1332(a), United States District Courts maintain original

jurisdiction of all civil actions between citizens of different states where the matter in controversy exceeds the sum of \$75,000.

8. Removal of this action is proper under 28 U.S.C. §§ 1441(a) and 1332(a) because complete diversity of citizenship exists between the parties, and the amount in controversy in this matter exceeds \$75,000, exclusive of interest and costs.

9. Big-D Construction was served on March 13, 2018, less than 30 days ago, therefore, this action is timely removed pursuant to 28 U.S.C. § 1446(b).

10. DFA consents to the removal of this action as indicated by its counsel's signature below.

**A. Diversity of Citizenship is Satisfied.**

11. As alleged in the Petition, SECO is a citizen of Missouri. (*See* Petition, Ex. 1, at ¶ 1).

12. Big-D Construction is an Alaska limited liability company. (*Id.* at ¶ 2); *see also* (Declaration of Melissa A. Beutler ("Beutler Decl."), attached hereto as Exhibit 2 at ¶ 3).

13. DFA is a Kansas corporation, registered to do business in Missouri. (Petition, Ex. 1, at ¶ 3).

14. For purposes of removal, a limited liability company ("LLC") is treated as a partnership for purposes of diversity jurisdiction, and citizenship depends on the citizenship of the LLC's members. *GMAC Commercial Credit, LLC v. Dillard Dep't. Stores, Inc.*, 357 F.3d 827, 829 (8th Cir. 2004), citing *Carden v. Arkoma Associates*, 494 US 185, 195 (1990).

15. Moreover, a corporation is a citizen of the state in which it is incorporated and has its principal place of business. *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). The phrase "principal place of business" in 28 U.S.C. § 1332(c)(1) refers to the place where a corporation's high-level

officers direct, control, and coordinate the corporation's activities, *i.e.*, its "nerve center," which typically will be found at its corporate headquarters. *Id.*

16. Big-D Construction is an Alaska limited liability company and its members are residents of Utah and Minnesota. (Beutler Decl. ¶ 3). Specifically, Big-D Construction has three members: Big-D Midwest Corp., which is a Utah corporation, Christopher Gryzbowski, a citizen of Minnesota, and Cory Shubert, also a citizen of Minnesota. (*Id.*) Big-D Construction is, therefore, a citizen of Utah and Minnesota. DFA, a corporation organized under the laws of Kansas, is a citizen of Kansas.

17. Thus, for removal purposes, neither Big-D Construction nor DFA are citizens of Missouri. *See GMAC Commercial Credit*, 357 F.3d at 829.

18. Accordingly, the requisite diversity of citizenship exists. *See* 28 U.S.C. § 1332(c).

**B. The Amount in Controversy Requirement is Satisfied.**

19. In this action, Plaintiff claims that it "has been damaged in the amount of \$722,839.52" because of Big-D Construction's "failure to pay SECO the balance due for its Work on the Project." (*See* Petition, Ex. 1, at ¶ 28). In addition to this specific amount, SECO seeks pre and post-judgment interest, consequential damages, lost profits, punitive damages, and attorneys' fees. (*See generally* Petition, Ex. 1). As such, there is no question that the amount in controversy in this action far exceeds \$75,000.

**CONCLUSION**

20. There is complete diversity between the parties because Plaintiff is a citizen of Missouri, Big-D Construction is citizen of Utah and Minnesota, and DFA is a citizen of Kansas. The damages Plaintiff seeks, including the specific amount of \$722,839.52 alleged to be due under a subcontract, far exceed the \$75,000 jurisdictional minimum.

21. Removal to this Court is proper under diversity of citizenship jurisdiction, 28 U.S.C. § 1332(a).

WHEREFORE, Defendant Big-D Construction Midwest, LLC, by consent of Defendant Dairy Farmers of America, Inc., removes this case to the United States District Court for the Western District of Missouri and respectfully requests that no further proceedings be had in the Circuit Court of Texas County, Missouri, Case No. 18TE-CC00076, and prays for such other and further relief as the Court deems just and proper.

Respectfully submitted,

**LEWIS RICE LLC**

DATED: April 12, 2018

By: /s/ Patrick J. Thornton

Patrick J. Thornton, #63293

Jeremy P. Brummond, #50940 (*pro hac vice pending*)

Jerina D. Phillips, #65103 (*pro hac vice pending*)

600 Washington Avenue, Suite 2500  
St. Louis, MO 63101

[pthornton@lewisrice.com](mailto:pthornton@lewisrice.com)

[jbrummond@lewisrice.com](mailto:jbrummond@lewisrice.com)

[jphillips@lewisrice.com](mailto:jphillips@lewisrice.com)

(314) 444-7600 – Phone

(314) 612-1339 – Facsimile

*Attorneys for Defendant Big-D Construction  
Midwest, LLC*

**BY CONSENT**

**HUSCH BLACKWELL LLP**

By: /s/ Bryan O. Wade

Bryan O. Wade, #41939

Ginger K. Gooch, #50302

901 St. Louis Street Suite 1800

Springfield, Missouri 65806

(417) 268-4116

(417) 268- 4040 (facsimile)

[bryan.wade@huschblackwell.com](mailto:bryan.wade@huschblackwell.com)

ginger.gooch@huschblackwell.com

*Attorneys for Defendant Dairy Farmers  
of America, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing ***NOTICE OF REMOVAL*** was electronically filed via the Court's CM/ECF system and was e-mailed and mailed, first class postage prepaid, to the following this 12th day of April, 2018.

Jason C. Smith  
Benjamin J. Shantz  
Spencer Fane  
2144 E. Republic Road, Ste. B300  
Springfield, MO 65804  
bshantz@spencerfane.com  
jcsmith@spencerfance.com

*Attorneys for Plaintiff Springfield  
Engineering Company*

/s/Patrick J. Thornton